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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

3685 SAN FERNANDO LENDERS, LLC, *et al.*,
Plaintiffs,

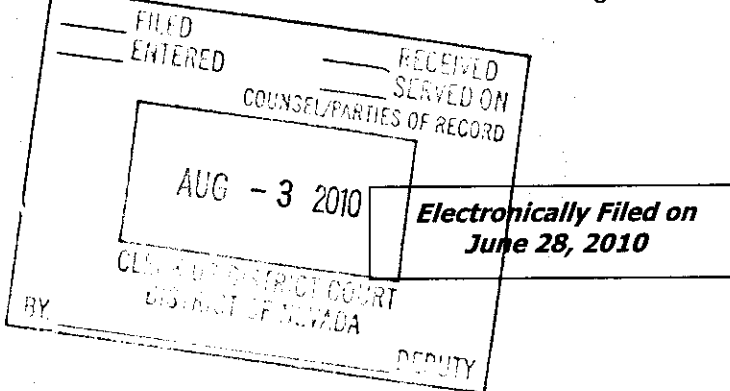
v.

COMPASS USA SPE LLC, *et al.*,
Defendants.

Attorneys for:
Robert J. Kehl; Ruth Ann Kehl; Robert A. Kehl; Christina "Tina" M. Kehl; Krystina L. Kehl; Daniel J. Kehl; Kevin A. Kehl, individually and on behalf of Susan L. Kehl and Andrew R. Kehl; Patrick J. Anglin; Cynthia A. Winter; Kehl Development Corporation; Judy A. Bonnet; Kevin A. McKee; Pamela J. McKee; Warren Hoffman Family Investments, LP Charles B. Anderson, as trustee of the Charles B. Anderson Trust; Rita P. Anderson, as trustee of the Rita P. Anderson Trust; Baltes Company; Mojave Canyon, Inc.; Donna Cangelosi, Tito Castillo, Tony Chaudhry, Jonathan Eller, Robin Graham, Don Hess, Christina Knoles, Arthur Kriss, Joe LaFayette, Janice Lucas, Charles Maraden, Carol Mortenson, Daniel Newman, Edward Schoonover, Carol Simon, Lawrence Tengan, Connie Westbrook, Ken Zawacki, Alfie Fujitani, Walt Musso, Cyril Tammadge, and Robert Fuller
(collectively, the "Direct Lenders")

Case No. 2:07-CV-892-RCJ-GWF-BASE
and
Case No. 3:07-CV-241-RCJ-GWF

**ORDER REGARDING THE
APPLICATION OF THE SUMMARY
JUDGMENT ORDER, DATED SEPTEMBER
18, 2009 [DOC. #1489]**



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1 Pursuant to the Court's request at the hearing held on April 8, 2010, the parties submitted
2 additional briefing regarding the applicability of the Court's Order, dated September 18, 2009 [Doc.
3 #1489] (the "Order"), to all the Loan Servicing Agreements ("LSAs") executed by the direct lenders
4 and USA Commercial Mortgage Company ("USACM"). In the Order, the Court ruled, as a matter
5 of law, that, under the compensation section of a "Type 4" LSA, the loan servicer was not entitled to
6 collect default interest and late charges as servicing compensation on any loans for which the direct
7 lenders have not received payment in full of the principal amount of the loans because such sums
8 are not "collected from the Borrower," as was required by the LSA. The Court also ruled, as a
9 matter of law, that the loan servicer was not entitled to collect default interest and late charges as
10 servicing compensation directly from the direct lenders. The Court further ruled, as a matter of law,
11 that the loan servicer was entitled under the compensation section of a "Type 4" LSA to one accrued
12 annual servicing fee for each of the loans, to be calculated based on the ultimate collection amount,
13 not the original principal amount of each of the loans, because the LSA provided that the loan
14 servicer was entitled to "retain monthly . . . its annual servicing fee."

15 The Court having reviewed the pleadings and papers on file, and received the arguments of
16 counsel at the hearing held on May 5, 2010,

17 IT IS HEREBY ORDERED that, because all the LSAs provide that the loan servicer is
18 entitled to default interest and/or late charges only if such sums are "collected from the Borrower,"
19 the ruling in the Order that the loan servicer is entitled to default interest and late charges only if the
20 direct lenders are paid in full the principal amount of the loans applies equally to all the LSAs as a
21 matter of law.

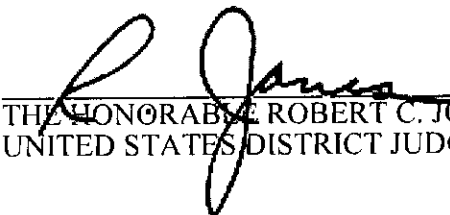
22 IT IS FURTHER ORDERED that, because the Court's foregoing ruling related to the loan
23 servicer's entitlement to default interest and late charges is based on its interpretation of the LSAs,
24 the application of payments provisions in the promissory notes for the loans originated by USACM
25 are irrelevant, as a matter of law, to whether the loan servicer is entitled to default interest and late
26 charges as servicing compensation when the direct lenders have not received payment in full of the
27 principal amount of the loans.
28

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1 IT IS FURTHER ORDERED that, because all the LSAs provide that the loan servicer is
 2 entitled to default interest and/or late charges only if such sums are "collected from the Borrower,"
 3 the ruling in the Order that the loan servicer is not entitled to collect default interest and late charges
 4 as servicing compensation directly from the direct lenders applies equally to all the LSAs as a matter
 5 of law.

6 IT IS FURTHER ORDERED that, because all the LSAs provide that the loan servicer is
 7 entitled to "retain monthly . . . its annual servicing fee," the ruling in the Order related to the loan
 8 servicer's entitlement to one accrued annual servicing fee, based on the ultimate collection amount
 9 of each of the loans, not the principal amount of the loans, applies equally to all the LSAs as a
 10 matter of law. The Court's ruling is also based on the undisputed fact that all loans originated by
 11 USACM were for a term of only one year. In addition, it is immaterial, as a matter of law, to the
 12 Court's ruling that the LSAs contain varying servicing fee percentages.

13
 14 DATED: 8-3-2010

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 16 
 17 THE HONORABLE ROBERT C. JONES
 18 UNITED STATES DISTRICT JUDGE

19 Prepared and Submitted By:
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 21 JONES VARGAS

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